



Senate

General Assembly

File No. 543

January Session, 2009

Substitute Senate Bill No. 1046

Senate, April 8, 2009

The Committee on Public Health reported through SEN. HARRIS of the 5th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING RESTRICTED ACCESS TO PRESCRIPTION DRUG INFORMATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) (a) As used in this
2 section:

3 (1) "Commercial purpose" includes, but is not limited to,
4 advertising, marketing, promotion or any activity that could be used
5 to: (A) Influence sales or the market share of a pharmaceutical product,
6 (B) influence or evaluate the prescribing behavior of an individual
7 health care provider, or (C) evaluate the effectiveness of a professional
8 pharmaceutical detailing sales force; but does not include the use of
9 prescriber identifiable data by a professional physician organization
10 for the purpose of education and evaluation by individual members of
11 such organization;

12 (2) "Health insurer" means any entity, including a managed care
13 organization, that delivers, issues for delivery, renews or amends an

14 individual or group health plan in this state;

15 (3) "Managed care organization" means an insurer, health care
16 center, hospital, medical service corporation or other organization
17 delivering, issuing for delivery, renewing or amending any individual
18 or group health managed care plan in this state;

19 (4) "Pharmacy" means a place of business where drugs and devices
20 may be sold at retail and for which a pharmacy license has been issued
21 to an applicant under the provisions of section 20-594 of the general
22 statutes, and includes a nonresident pharmacy, as defined in section
23 20-627 of the general statutes; and

24 (5) "Pharmacy benefits manager" or "manager" means any person
25 that administers the prescription drug, prescription device or
26 pharmacist services portion of a health benefit plan on behalf of plan
27 sponsors such as self-insured employers, insurance companies, labor
28 unions and health care centers.

29 (b) No pharmacy benefits manager, pharmacy, health insurer or any
30 employee or agent of such manager, pharmacy or insurer may transfer,
31 sell or share, for any commercial purpose, prescription information if
32 such information contains individually identifiable information
33 regarding the patient or the prescribing practitioner.

34 (c) Nothing in subsection (b) of this section shall prohibit:

35 (1) The dispensing of prescription medications to a patient or to the
36 patient's authorized representative;

37 (2) The transmission of prescription information between an
38 authorized prescribing practitioner and a licensed pharmacy;

39 (3) The transfer of prescription information between licensed
40 pharmacies;

41 (4) The transfer of prescription records that may occur as part of: (A)
42 A consummated sale of a pharmacy to another person; (B) a

43 consummated merger by the pharmacy with another person or entity;
44 or (C) a transfer to a successor in interest;

45 (5) The transfer of information to a patient concerning: (A) The
46 patient's health condition; (B) adherence to a prescribed course of
47 therapy; (C) the drug being dispensed; (D) treatment options; or (E)
48 clinical trials;

49 (6) The collection, use, transfer or sale of patient and prescribing
50 practitioner nonidentifiable individual data on the basis of zip code,
51 geographic region or medical specialty for commercial purposes;

52 (7) The transfer or sharing of prescription information for the
53 purposes of obtaining health insurer reimbursement, formulary
54 compliance, care management, utilization review by a health care
55 provider or the patient's insurance provider or agent, health care
56 research, or as otherwise provided by law, provided any person
57 receiving such information pursuant to this subdivision shall not
58 disclose such information except as authorized under this section; and

59 (8) The collection, use, transfer or sale of prescription records to a
60 third party solely for the purpose of facilitating notice to patients or
61 health care providers of a pharmaceutical recall or warning issued by
62 the federal Food and Drug Administration; or for the purpose of
63 assisting a prescribing practitioner with provider identified
64 information only regarding such practitioner's prescribing history and
65 nonidentifiable information regarding other practitioners' prescribing
66 history.

67 (d) A violation of this section shall be deemed an unfair or deceptive
68 act or practice under subsection (a) of section 42-110b of the general
69 statutes.

70 (e) A violation of this section by a health insurer shall be deemed an
71 unfair insurance practice under chapter 704 of the general statutes.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2009</i>	New section
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PH *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Consumer Protection, Dept.	GF - Revenue Gain	Potential	Potential
Consumer Protection, Dept.	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a potential revenue gain to the state due to potential violations of the Connecticut Unfair Trade Practices Act (CUTPA).

Additionally The Department of Consumer Protection (DCP) may require part-time staff to monitor violations of prescription information. The estimated cost of two part-time positions would be \$100,000 including fringe benefits. The DCP's Drug Control Division currently reviews possible violations of prescription information in response to consumer complaints but the numbers are small – about 2 a year. The bill could significantly increase this number and would also necessitate a more rigorous type of investigation since many of the pharmacy databases to be reviewed are housed in corporate headquarters out-of-state

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1046*****AN ACT CONCERNING RESTRICTED ACCESS TO PRESCRIPTION DRUG INFORMATION.*****SUMMARY:**

This bill restricts access to certain prescription drug information. It prohibits pharmacy benefit managers, pharmacies, health insurers, or any of their employees or agents from transferring, selling, or sharing, for any commercial purpose, prescription drug information if it contains individually identifiable information concerning the patient or the prescribing practitioner.

The bill does not prohibit the use, transmission, or transfer of prescription information in certain specified situations.

A violation of the bill's provisions is deemed an unfair or deceptive practice under the Connecticut Unfair Trade Practices Act (CUTPA). The bill also makes a violation by a health insurer an unfair insurance practice.

EFFECTIVE DATE: October 1, 2009

TERMS AND DEFINITIONS***Commercial Purpose***

The bill defines "commercial purpose" to include advertising, marketing, promoting, or any activity that could be used to (1) influence the sales or market share of a pharmaceutical product, (2) influence or evaluate the prescribing behavior of an individual health care provider, or (3) evaluate the effectiveness of a professional pharmaceutical detailing sales force. (Detailing, in this context, generally refers to the use of targeted marketing and sales visits by pharmaceutical representatives based on the data pharmaceutical

companies obtain about prescription practices.)

Commercial purpose, under the bill, does not include the use of prescriber identifiable data by a professional physician organization for purposes of education and evaluation by individual members.

Pharmacy and Pharmacy Benefits Manager

The bill defines “pharmacy” as a place of business with a pharmacy license where drugs and devices may be sold at retail and includes a nonresident pharmacy (a pharmacy outside the state which ships, mails, or delivers legend devices or legend drugs into the state according to a prescription order; “legend drug” or “legend device” is any drug or device that requires a prescription).

A “pharmacy benefits manager” is any person administering the prescription drug, device, or pharmacist services portion of a health benefit plan on behalf of plan sponsors (e.g., self-insured employers, insurance companies, labor unions, and health care centers).

Health Insurer

Under the bill, “health insurer” means any entity, including a managed care organization, that delivers, issues for delivery, renews, or amends an individual or group health plan in the state.

Managed Care Organization

The bill defines “managed care organization” as an insurer, health care center (HMO), hospital, medical service corporation, or other organization delivering, issuing for delivery, renewing, or amending any individual or group health managed care plan in the state.

ALLOWED ACTIVITIES

The bill does not prohibit (1) dispensing prescriptions to a patient or the patient’s authorized representative; (2) transmitting prescription information between an authorized prescriber and a licensed pharmacy; (3) transfer between licensed pharmacies; (4) transferring prescription records if pharmacy ownership changes or transfers; (5) giving information to a patient about a health condition, adherence to

a prescribed course of therapy, or other information about the drug dispensed, treatment options, or clinical trials; (6) collecting, using, transferring, or selling patient and prescriber data, by zip code, geographic region, or medical specialty for commercial purposes, as long as it does not identify individuals; (7) transferring or sharing prescription information for purposes of receiving health insurer reimbursement, formulary compliance, care management, utilization review by a health care provider or patient's insurance provider or agent, health care research, or as otherwise provided by law (but any person receiving information in this manner must not disclose it except as authorized); and (8) collecting, using, transferring, or selling prescription records (a) to a third party solely for facilitating notice to patients or providers of a pharmaceutical recall or warning issued by the federal Food and Drug Administration or (b) for assisting a prescribing practitioner with provider identified information concerning only his or her prescribing history and nonidentifiable information concerning other practitioners' prescribing history.

BACKGROUND

CUTPA

This law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the Department of Consumer Protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order. CUTPA also allows individuals to sue.

Connecticut Unfair Insurance Practice Act (CUIPA)

The law prohibits engaging in unfair or deceptive insurance acts or practices. CUIPA authorizes the insurance commissioner to issue regulations to implement the act, conduct investigations and hearings,

issue cease and desist orders, ask the attorney general to seek injunctive relief in superior court, impose fines, revoke or suspend licenses, and order restitution.

Fines may be up to (1) \$5,000 per violation to a \$50,000 maximum, or (2) \$25,000 per violation to a \$250,000 maximum in any six-month period if knowingly committed. The law also imposes a fine of up to \$50,000, in addition to or in lieu of a license suspension or revocation, for violating a cease and desist order.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 29 Nay 1 (03/20/2009)